(1)

92-1385

No. _____

Supreme Court, U.S.
FILED
FEB 2 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1992

DANIEL L. EDWARDS, JR.,

Petitioner

v.

CONSTANCE B. NEWMAN, DIRECTOR,
OFFICE OF PERSONNEL MANAGEMENT,

Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR
FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Daniel L. Edwards, Jr.
Pro se Petitioner
1100 Huffman Ave.
Dayton, Ohio 45403
Tel. (513) 253-7163

53 pp

QUESTIONS PRESENTED FOR REVIEW

I. Does the MSPB rejection of Petitioner's Civil Rights and Age Discrimination complaints, and subsequent U.S. Court Of Appeals For The Federal Circuit decision without an opinion constitute lack of due process in violation of the Bill Of Rights to U.S. Constitution Amendment I ?

II. Does Federal District Court failure to grant a jury trial violate Bill Of Rights to U.S. Constitution Amendment VII involving matters of Veterans status, benefits and retirement annuity at OPM relative to Petitioner WWII Army service?

III. Does the MSPB violate an employee's Constitutional Rights in altering evidence and testimony, and in the prohibiting of discrimination complaints being heard at the same time as prohibited personnel practices, as submitted to MSPB.

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JURISDICTION

Amendment I to the United States Constitution.

The jurisdiction of this Court is invoked under Title 28 U.S. Code § 2101(c).

STATUTES INVOLVED

Title 5 U.S. Code § 2014; Title 38 U.S. Code; Title 5 U.S. Code § 7702 and 7703; Title 42 U.S. Code § 2000e on "mixed-cases" involving Civil Rights violations (Title 42 U.S. Code § 2000e-16); Age Discrimination in violation of Title 29 U.S. Code § 633a; Rehabilitation Act violation under Title 29 U. S. Code § 791; Title 5 U.S. Code § 552; Title 5 U.S. Code § 7701(c)(2)(A),(B),and (C); Title 5 U.S. Code § 8334, § 8338(a), § 8342, and § 8347; U.S. Executive Order 5396; and Title 28 U.S. Code.

STATEMENT OF THE CASE

Petitioner action to MSPB, dated 14 June 1988, Subject: Appeal of Discrimination and OPM 20 May 1988 Decision. See Appendix A.

OPM and Air Force conspired and destroyed government records on my personnel actions in order to deprive me of my long established Veteran status. OPM and Air Force refused to use my copies of the government records. Petitioner appealed to the Veterans Administration for help in 14 December 1987 letter with copy to OPM. See Appendix B.

U.S. Dept. Of Labor letter dated 25 January 1988 advises that Veterans with employment and training problems are matters not under their jurisdiction, and transferred issue to OPM 9 January 1988. There has been no response from OPM. See Appendix C.

OPM disallowed my retirement, letter dated 11 May 1981, as filed at OPM's direction in May 1980. See Appendix H.

Petitioner is denied federal service time and leave status by OPM as taken under approved leave for disabled Veterans cited in Federal Personnel Manual 630-3 par 1 - 4 and Title 5 U.S. Code. OPM would not allow me to have my Veterans status. Appendix I.

Constance J. Horner, Dir., OPM, would not comply with Petitioner Discovery Request Docket No. CH0831881O487 dated 25 June 1988. MSPB refused to require OPM to release data from records. MSPB further claimed in bad faith, that OPM did not have said records. This proved to be in error whenever OPM records were subsequently released to Petitioner 8 September 1988 under formal Freedom Of Information Act and Right Of Privacy Act. Even then, and now, OPM, MSPB and Air Force refuse to recognize Petitioner's Veterans status and benefits.

Petitioner has never desired nor freely requested refund of money from retirement account since I was fired for not donating to my superiors' church fund drive. While

employed, before witness, and under threat of insubordination from Major James Chatfield if I did not comply, Petitioner was forced to sign a refund form on two separate occasions.

By telephone conversation, OPM Regional Dir. (Chicago) Joseph Connor said that he had both forms canceled. Nevertheless, new OPM Dir. Constance J. Horner (appointed in Washington) differed with Mr. Connor and claimed she found one of the refund forms supposedly canceled by Mr. Connor.

ARGUMENT

U.S. Court Of Appeals For The Federal Circuit case No. 92-3237, judgement without Opinion. This lack of Opinion does not afford Petitioner sufficient understanding or opportunity to further seek remedies at the Appeals Court level.

Consequently, Petitioner is compelled to address MSPB errors, omissions and

violations. MSPB 14 October 1988 DECISION on page 2 on reported Petitioner BACKGROUND is in error:

Second line alleging 16 years of creditable civil service. Here again, MSPB refuses to recognize Petitioner Veteran status. Whereas, Petitioner was called to active duty 29 March 1943 through 11 March 1946, there are 19.5 years of service.

Third line citing 1985 is wrong and misleading inasmuch as Petitioner did not Apply in 1985. The first time Petitioner applied was 2 November 1961, then in April 1962, at OPM direction applied in May 1980, and Petitioner applied again in 1987.

Line seven statement is misleading wherein both forms signed under protest were while Petitioner was still employed, under threat, and canceled by OPM Regional Director Joseph Connor. Still, a check was received in June 1962. Local Representative (Russell Ray) and I called Mr. Connor and ask to return the check to Connor's Chicago

office because Petitioner expected to retire on 2 November 1961 application. OPM, Mr. Connor, said that he could not accept the check and ordered Mr. Ray and I to cash the check and he would tell us when to return it. MSPB and OPM now claim that only one form is on file as per line nine. The form that is alleged to be missing is the form I penned "under protest" on and which made Major Chatfield extra abusive.

As a matter of importance, Mr. Connor was requested by Petitioner to testify at the MSPB hearing in early 1980 but, MSPB objected. Mr. Ray wanted to testify to the OPM cancellation of the two forms and the discrimination on behalf of Petitioner but, MSPB denied him, also. In fact, no one was allowed to testify that had made previous formal statements or affidavits, thereby denying any additional information.

The first 4 lines of second paragraph are false. OPM, Mr. Connor, had promised to tell Mr. Ray and Petitioner when to

redeposit the undesired money. Accordingly, when OPM ordered the additional retirement application to be filed, Petitioner complied and also redeposited the money. In turn, OPM has issued a receipt stating that there was no balance due. That same page's footnotes are false, wherein MSPB received Discovery Request data within the established time frame according to MSPB procedures and were not disputed nor denied by MSPB. Furthermore, MSPB distorted and restricted the hearing of 2 August 1988. MSPB states that certain issues "were found immaterial to this Appeal" the day before the hearing of 2 August 1988. Specifically, so called "other issues" include (1) Age and religious discrimination related to his (Petitioner) removal is error and legally unconstitutional, wherein:

1. The formal Age Discrimination complaint before OPM and MSPB is dated 28 December 1987, after this Petitioner was rehired, not the alleged removal dated of

23 April 1962. See Appendix D.

2. The Petitioner's formal First Amendment violation complaints includes religious discrimination, and also matter cited in Appendix A, B, C, E. All material dated within 1986 through 1988. Further, the MSPB decision prior to the 2 August 1988 hearing as applied was an exercise of arbitrary and capricious standards without the facts. Petitioner was not permitted to question the basis or to object to the MSPB manipulation of the process or facts.

Amendment I of the U.S. Constitution provides the right to petition the Government for redress of grievances. But, when Petitioner tried to give his testimony of the formal discrimination and complaint, MSPB would turn off the recorder at the hearing. Before turning the recorder back on MSPB repeated a statement, made walking in the room, that MSPB was not going to hear the discrimination complaints brought up in testimony. This abuse of authority

not only limited the scope of the facts but, also made the MSPB "hearing" false and illegal.

Page 3 second paragraph references the MSPB claim that Petitioner did not dispute OPM assertions, this is false. OPM is clearly identified as one of the "other parties" in the discrimination complaints. OPM violated Title 38 U.S. Code and, would not allow my Veterans status in violation of Title 5 U.S. Code. At one point an Air Force medical officer sent me home and canceled approval of the cashier job because I was being used as a stock carrier. The heavy loads exceeded the limits set forth by my Veterans records that OPM and Air Force deny exist. In any event, the job duties changed and I was compelled not to compete in that field. But, neither was I permitted to compete in my previous career field at Wright-Patterson AFB. This is cited in my Personnel Action -- Air Force and OPM

disputed my complaint.

Reference third paragraph of page 3 -- Petitioner has proved and established that the Refund Application was invalid. Yet, OPM claimed that I was entitled to the money and returned it four times over my objections. This is part of the discrimination that MSPB would not allow to be heard or processed. Additionally, the White House refused to release records under the Freedom Of Information Act and Privacy Act when I sent it there. See Appendix H.

Reference the end of page 3 para. 3 -- The evidence and records show that both of Petitioner's refund applications were invalid and as such OPM (Mr. Connor) canceled both forms while Petitioner was on the job. Petitioner signed both forms involuntarily, under threat of insubordination charges by Major Chatfield and of being fired that same day. The footnote on page 4 is false whereas MSPB

claims that "the Appellant has not been misinformed about his rights." The facts are: OPM (Mr. Connor) informed Mr. Ray and Petitioner that it is was illegal for Major James Chatfield to force employee signature on refund forms by use of threats, and that both forms were being canceled.

Reference page 4 paragraph 3 -- MSPB failed to indicate the fact Mr. Connor later confirmed that both forms were canceled.

Reference page 5 paragraph 1 -- MSPB claimed that indications are that Appellant (Petitioner) was not assured by OPM (Mr. Connor) that Application forms would be canceled. The facts are OPM's (formerly CSC) Mr. Connor promised to cancel both forms and later confirmed both were canceled as witnessed.

Reference page 6 paragraph 1 -- MSPB claims are misleading and not supportable with the practice of government establishing agenda for their meetings not

just restrictions, scope and limitations as by MSPB meetings or hearings.

Reference page 6 paragraph 2 -- MSPB claims are not supported with facts and are false. MSPB being critical about Petitioner desire to tie testimony of early discrimination complaints which have not been resolved and are thus still pending. There is little doubt that the government does not still have the first refund form which bears "signed under protest". MSPB refused to allow Mr. Connor, Major Chatfield, and Gen. McClernon to testify to the facts -- This would have been in bad faith if MSPB had any doubts about the discrimination. I have found MSPB to be less than honest, and appear to be covering up for Air Force and OPM.

CONCLUSION

Petitioner, Daniel L. Edwards, Jr., prays that a Writ of Certiorari issue to review the decision of the Merit System Protection Board, and also of the U.S. Court of Appeals for the Federal Circuit judgement, and for a reversal of that judgement, and remand for a de novo hearing on the merits, and order MSPB hear the bias discrimination as well as other prohibited personnel practices while deciding both halves of the case at the same time. In Cruz v. Eept. of the Navy, 89-3359, June 25,1990, this Court stated that "when an employee brings an appeal to the Merit System Protection Board claiming discrimination as well as other prohibited personnel practices, the board must decide both haves of the case at the same time, says the U.S. Court of Appeals for the Federal Circuit."

Petitioner, Daniel L. Edwards, Jr., prays that a Writ of Certiorari issue also

grant statutory rights and benefits set forth in the U.S. Constitution Amendment I. "Amendment I. Religious establishment prohibited. Freedom of speech, of the press and right to petition. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or bridging the freedom of speech, or the press; or the right of the people to peacefully assemble, and to petition the Government for a redress of grievances."

Daniel L. Edwards, Jr.
Pro se Petitioner
1100 Huffman Ave.
Dayton, Ohio 45403
Tel. (513) 256-7173

14 June 1988

To: Regional Director
Merit System Protection Board
Chicago Reginal Office
230 South Dearborn Street, 31st Floor
Chicago, Illinois 60604-1669

Subject: Appeal Of Discrimination
and OPM 20 May 1988
Decision

Appellant: Daniel L. Edwards, Jr.
1100 Huffman Ave.
Dayton, Ohio 45403
Phone: (513) 253-7163

OPM final decision on my case is dated 20 May 1988 and signed Michael W. Sunner, as received 26 May 1988 and is herein appealed.

Copy of my 13 April 1988 corespondence addressed to the OPM Director and also NARFE President and others is likewise enclosed hereto. This request for a final OPM decision is self explanatory as it also cites my age-discrimination complaint against Air Force and OPM.

I hereby request a hearing on this capricious and arbitrary OPM action and discrimination.

The Appellant beleives that OPM action is wrong being with inaccuracy, omissions and lack of facts that perpetuates the misconception and therefore the improper OPM 20 May 1988 decision. Likwise, Appellant further seeks decisions and necessary action as remedies to issues still pending in age-discrimination complaint against Wright-Patterson AF Base, Ohio and OPM including complaints transferred from the Deptment Of Labor to Office of Personnel Management (OPM) and First Amendment violation.

The Appellant hereby states that greivance, complaints and/or appeals have been filed or initiated on this matter with the Civil Service Commission (now OPM), OPM, Department Of Labor, Equal Employment

Opportunity Commission, Veteran Administration, and the Ofice Of The President and also the Vice-President.

Sincerely,

Daniel L. Edwards, Jr.
Appellant
SS No. 403-26-6602
CSA 2 443 091
DOB 5/11/23
Certified Mail:
P 402 014 620

1100 Huffman Ave.
Dayton, Ohio 45403
14 December 1987

Veterans Administration
Regional Office
1240 East Ninth Street
Cleveland, Ohio 44199

Re: C 09 862 687
CSA 2 443 091

The Veterans Administration CERTIFICATION letter on my service connected disability, dated 16 August 1951, and as addressed to the U.S. Civil Service Commission (now OPM), Washington, D.C., has been rejected by OPM. Copy attached hereto. Furthermore, Air Force also destroyed their copy of VA CERTIFICATION in order to defraud me of my job, C.S. retirement and other entitlement rights and benefits.

This Air Force and Office of Personnel Management misconduct and falsification of my government records is a fraud being in violation of Title 5 U.S. Code, Federal

Personnel Manual 630-3 and also Executive Order 5396.

Please forward another copy of your 16 August 1951 letter of certification to OPM.

I trust that OPM will accept your copy of your 16 August 1951 letter of certification when again received directly from you an additional time. Please furnish me a copy of your communication to OPM.

Sincerely,

Daniel L. Edwards, Jr.
Phone: (513) 253-7163

cc: J. A. Cloyes, Asst Supr PA Cp-G
Civil Service Retirement Management
Office of Personnel Management
Washington, D.C. 20415

U.S. Department of Labor
Assistant Secretary for
Veterans Employment and Training
Washington, D.C. 20210
Jan. 25, 1988

Mr Daniel L. Edwards, Jr.
1100 Huffman Ave.
Dayton, Ohio 45403

Dear Mr. Edwards,

Thank you for your letter dated January 9 concerning civil service longevity pension credits.

While this office desires to be responsive to all veterans with employment and training problems, this matter is not under our jurisdiction. Therefore, I have taken the liberty of forwarding a copy of your letter to Mr. Don A. Smith, Chief of Veterans and Selective Placement Programs, Office of Personnel Management, Recruiting and Special Personnel Programs, 1900 E

Street, N.W., Room 7317, Washington, D.C. 20415 for reply.

I hope this information proves helpful.

Sincerely,

Donald E. Shasteen

1100 Huffman Ave.
Dayton, Ohio 45403
28 December 1987

Equal Employment Opportunity Commission
2401 East Street, N.W.
Washington, D. C. 20507

Subject: Discrimination Complaint

Above complaint is filed under the provisions of the Age Discrimination in Employment Act (ADEA).

Whereas:

(1) The U.S. Office Of Personnel Management, Washington, D.C. 20415 and the Air Force have altered, destroyed and falsified my government records in denying me my entitlement benefits and rights, and also employee benefits, such as retirement incentives.

(2) My first Amendment Rights are violated.

(3) OPM has altered my records which

are under OPM lawful custody, and rejected amendment and corrective actions--all being in violation of the Freedom Of Information Act and also the Privacy Act of 1974.

(4) OPM and Air Force have issued conflicting and falsified promises and reports. OPM Director has failed to release official information on appeal procedure as requested by my 4 May 1987. OPM claims that I must first receive a final OPM decision signed by Mr. Mike Sudan prior to my filing an appeal to the Merit System Protection Board.

(5) My OPM Application, dated 3 February 1987, as filed for deferred Civil Service retirement after minimum age 62 is still pending without any annuity after some eleven months. OPM on 17 April 1987 promised my annuity on 1 June 1987 but, then in July I received OPM letter dated 30 June 1987 claiming that the OPM promise was in error. Then later, OPM again claimed

that I was receiving an estimated annuity. This OPM claim is also false as alleged by OPM.

(6) Wright-Patterson Air Base, Ohio, claimed that Air Force wished to hire younger employee that was willing to relocated other stations. Furthermore, WPAFB claimed that my complaint in Air Force was being processed under Executive Order 10591. CPO Robert Watson agreed also along with EEOC Marion Carter and Edward Ogletree.

I hereby seek appropriate consideration and remedies to include the release of my back wages due me retroactively, immediate release of my deferred retirement annuity effective 3 February 1987.

Sincerely,

Daniel L. Edwards, Jr.
Civ. Serv. Acct. 2 443 091

1100 Huffman Ave.
Dayton, Ohio 45403
14 April 1987

President Ronald Reagan
Attn: Mr. Howard Baker, Chief of Staff
The White House
Washington, D. C. 20500

Dear President Reagan,

My correspondence to the White House, dated 14 February 1981, fell on deaf ears.

Can you help to get my Civil Service Records corrected under the Privacy Act of 1974, 5 U.S. Code 552a and also obtain Veterans benefits under the Federal Personnel Manual 630-3, Executive Order No. 5396 and Rights under Executive Order No. 10590 all being relative to the release of my Civil Service retirement annuity? My many request and applications for retirement are being delayed and/or denied.

OPM has unlawfully reduced my official federal service time from over 19.5 years down to 10 years, 6 months and 4 days, as of 20 February 1987. Further, OPM cut my

service time to 16 years and 7 months by OPM decision letter dated 11 May 1981.

I am told that I am not eligible for entitlement benefits as a service connected disabled Veteran because my Honorable Service Discharge for Army service must first be changed to a Medical Service Discharge. The Veterans Administration and also the Legion, VFW, and DAV all advise that a change in my Army Discharge in not necessary nor advisable. OPM and Air Force do not agree.

OPM has a new problem as of 8 April 1987 and my appeal is attached hereto for your info this date.

Trusting that you can help I remain

Respectfully yours,

Daniel L. Edwards, Jr.

Incl: Edwards 3 page APPEAL to OPM, dated 14 April 1987

EXECUTIVE ORDER

Special Leaves of Absence to be Given Disabled Veterans in Need of Medical Treatment

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual or sick leave as may be permitted by law and such leave without pay as may be necessary shall be granted by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

The granting of such leave is contingent upon the veteran's giving prior notice of definite days and hours of

absence required for medical treatment in order that arrangements may be made for carrying on the work during his absence.

HERBERT HOOVER

The White House,

July 17, 1930

[No. 5396]

1100 Huffman Ave.
Dayton, Ohio 45403
28 May 1988

Vice President George Bush
1600 Pennsylvania Ave.
Washington, D.C. 20500

Dear, Vice President Bush,

Further reference is made to my letter of 19 May 1988 on matter relative to my Age Discrimination complaint against OPM and Air Force.

I still do not have my E.O. 5396 leave restored, my WWII Veteran status recognized or my Civil Service Retirement annuity released as approved 17 April 1987 and alleged to be in error in OPM letter received in July 1987.

This enclosed 24 May 1988 government check from OPM is the third check I have received from OPM in OPM scheme to bar me

from receiving my Civil Service retirement annuity. I have never ask for nor desired my retirement account fund to be refunded since I was illegally fired, being charged with inefficiency while I was on approved E.O. 5396 (FPM 630-3) leave being treated for service connected disability which OPM refuses to recognize. I was charged with inefficiency in violation of E.O. 5396 and Title 5 U.S.C.

Air Force threatened to cut my throat and Major Chatfield also threatened me with insubordination if I did not sign OPM forms while I was employed. Accordingly, I appealed concurrently to OPM (then CSC) and Air Force. OPM said that both OPM forms were void and also OPM promised not to tamper with my CS Account funds. Now, this administration OPM claims that they now desire to use the second form for the withdrawing of funds from my CSA 2 443 091 account. I trust that you can have this 24

May 1988 check returned to my retirement

CSA 2 443 091.

Respectfully,
Daniel L. Edwards, Jr.
SS No. 403-26-6602
U.S. Certified Mail
(P 402 014 526)

United States Of America
Office OF
Personnel Management
Washington, D.C. 20415
11 May 1981

In Reply Refer To:
CCK:SG:ml
CSA-2 443 091

Daniel L. Edwards, Jr.
1100 Huffman Avenue
Dayton, Ohio 45403

Dear Mr. Edwards:

A Federal employee must meet all of the following conditions to be eligible for retirement on disability annuity.

1. He must occupy a position covered by the retirement law and have completed at least 5 years of creditable civilian service.

2. He must have become totally disabled for useful and efficient service in the grade or class of position last occupied.

3. The disabling disease or injury must not be the result of vicious habits, intemperance, or willful misconduct on his

part.

You were separated from your position under the retirement law on April 23, 1962, after completing 16 years, 7 months of creditable Federal service. Since no claim for disability annuity was filed during one year following the date of separation and there is nothing in the facts as stated to indicate that the Commission would have authority to waive the filing limitation under the incompetency exception in your case, any claim you might now submit for disability retirement would have to be disallowed on the ground that it was not timely filed.

Sincerely yours,

Sue A. Gala
for chief of Section

Subchapter 1. General Provisions

"... 1.4 ABSENCE OF DISABLED VETERANS

Under Executive Order 5396, a disabled veteran must be granted sick leave or annual leave, as appropriate, or leave without pay, if necessary, for medical treatment when he presents an official statement from a duly constituted medical authority that medical treatment is required. The veteran must give prior notice of the period during which his absence for treatment will occur."

Note: This judgment is not accompanied by an opinion prepared for publication...

United States Court Of Appeals For The Federal Circuit

92-3237

Daniel L. Edwards, Jr.

Petitioner

v.

Constance B. Newman, Director
Office Of Personnel Management,

Respondent,

Judgment

On Appeal from the Merit System Protection Board

in CASE NO(S). CH0831881Ø487

This CAUSE having been considered, it is ORDERED and ADJUDGED:

Per Curiam (Archer and Michel, Circuit, Carrigan, District Judge):

AFFIRMED. Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

DATED NOV 4 1992 Francis X. Gindhart, Clerk

United States Court Of Appeals For The Federal Circuit

Notice Of Entry Of Judgment Without Opinion

Judgment Entered: NOV 4 1992

The judgment of the court in your case was entered today pursuant to Rule 36. This Court affirmed the judgment or decision that was appealed. None of the relief sought in the appeal was granted. No opinion accompanied the judgment. The mandate will be issued in due course.

Costs may be recoverable from the appellant or petitioner in favor of the appellee or respondent under Rule 39. A party entitled to costs is provided with a bill-of-costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be

presumed correct in the absence of a timely filed objection.

Costs when taxed are payable to the party awarded its costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se.

Exhibits and visual aids shall be promptly retrieved by the party that lodged them with this court.

Francis X. Gindhart
Clerk

EDWARDS V Newman, 92-3237
(MSPB - CH0831881Ø487)

UNITED STATES OF AMERICA
MERIT SYSTEM PROTECTION BOARD
CHICAGO REGIONAL OFFICE

DANIEL L. EDWARDS, JR.,
APPELLANT

v.

OFFICE OF PERSONNEL MANAGEMENT,
AGENCY
(CSA # 2 443 Ø91)

DOCKET NUMBER
CHØ8318810487

DATE: October 14,1988

Daniel L. Edwards, Dayton, Ohio, pro se
John E. Landers, Washington, D.C., for the Agency

Before

Howard J. Ansorge
Administrative Judge

Initial Decision

By petition filed June 14, 1988, Mr. Daniel L. Edwards appealed from the May 20, 1988 reconsideration decision of the Office of Personnel Management (OPM) denying his application for a retirement annuity. The Board has jurisdiction over Mr. Edwards's

timely appeal. See 5 U.S.C.A. § 7701(a) (West 1980); 5 U.S.C.A. § 8347(d) (West Supp. 1988); 5 C.F.R. § 831.110 (1988). A hearing was held in Dayton, Ohio on August 2, 1988.

For the reasons set forth below, OPM's reconsideration decision is AFFIRMED.

BACKGROUND

On April 23, 1962, the Appellant was removed from employment with the Department of the Air Force, after more than 16 years of creditable service under the civil service retirement system. In 1985, upon reaching the age of 62, he applied for a retirement annuity. OPM denied his application because the appellant filed for and received a refund of his retirement contributions when he was separated in 1962. OPM's file contains a copy of the appellant's "APPLICATION FOR REFUND OF RETIREMENT DEDUCTIONS" dated April 23,

1962. (Agency File at tab 6). That refund application bears the appellant's signature and, under the heading "NOTICE," states "If you have more than five years of service you may be entitled to annuity rights which will be forfeited by payment of the refund unless you are later reemployed."

In appealing OPM's decision denying his application for a retirement annuity, the appellant claimed that OPM should accept his redeposit of his retirement contributions because he did not voluntarily request the refund in 1962{1}. To prevail in this appeal, the appellant must establish, by a preponderance of the evidence, that OPM's reconsideration decision is in error. See Cheeseman v. Office of Personnel Management, 21 M.S.P.R. 118, 123-24 (1984), aff'd, 791 F.2d 138 (Fed. Cir. 1986); Brown v. Office of Personnel Management, 9 M.S.P.R. 122, 125 (1981).

ANALYSIS AND FINDINGS

Under the Civil Service Retirement Act, the application for and receipt of a lump-sum payment of retirement contributions voids all annuity rights based upon the period of service covered by that lump-sum payment. 5 U.S.C.A. § 8342(a) (West 1980 & Supp. 1988); see Yarbrough v. Office of Personnel Management, 770 F.2d 1056, 1060 (Fed. Cir. 1985); Robinson v. Office of Personnel Management, 32 M.S.P.R. 307, 309 (1987). Those annuity rights may only be reinstated if the individual is later reemployed in a position subject to civil service retirement coverage and, while so employed, redeposits the retirement contributions covering the period of prior service. See 5 U.S.C.A. § 8334(d) (West 1980); 5 U.S.C.A. § 8342(a)(West 1980 & Supp. 1988).

According to OPM, the appellant was not employed in a position subject to civil service retirement coverage after his

separation from the service in 1962. OPM asserted that it records show that the appellant was employed for one day as a cashier in the commissary at Wright-Patterson Air Force Base and from May to August 1977 in a temporary appointment. OPM further asserted that neither position was subject to civil service retirement coverage. The appellant did not dispute OPM's assertions. Therefore, I find that the appellant was not reemployed in a position subject to civil service retirement coverage subsequent to his separation from the service in April 1962; nor does the record show that he made any attempt to redeposit his prior retirement contributions during any of the above described post-1962 service.

Nevertheless, the appellant may be entitled to redeposit his retirement contributions if he establishes that his refund application was invalid. See De Galope v. Office of Personnel Management,

35 M.S.P.R. 167, 169-70 (1987); Jacobson v. Office of Personnel Management, 26 M.S.P.R. 410, 411, petition for reconsideration denied, 28 M.S.P.R. 441 (1985); Cafe v. Office of Personnel Management, 19 M.S.P.R. 609, 610-11, (1984). To show that his refund application was invalid because he signed it involuntarily, the appellant must show that he was misled by the agency's statements, that his refund application was completed under duress or coercion, or that some other condition precluded a voluntary decision on his part{2}. See Christie v. United States, 518 F.2d 585, 587-88 (Ct. Cl. 1975); Scharf v. Dept. of Air Force, 710 F.2d 1572, 1574 (Fed. Cir. 1983); Koop v. Federal Emergency Management Agency, 16 M.S.P.R. 605, 607 (1983).

The appellant was removed from the Air Force effective April 23, 1962. According to the appellant, certain Air Force officers had him fired and were attempting to "swindle" him out of his retirement

because he refused to contribute to church fund raising drive supported by one of the officers. The appellant asserted that the officers coerced him into applying for the refund when he was removed by threatening to charge him with insubordination or to "cut his throat" if he refused. (See Appellant's Exhibit MM).

The appellant testified that he signed a refund application a few days before the April 23rd application upon which OPM based its reconsideration decision. The appellant testified that on April 16, 1962, he signed a refund application, which was post-dated April 20, 1962. The Appellant testified that he wrote "signed under protest by orders of Col. Lawton" on the face of the April 20th application. The appellant further testified that he then called the Chicago Regional Office of the Civil Service Commission (CSC) and spoke to a Mr. Joseph Connor. According to the appellant, he told Mr. Connor that he

signed the application involuntarily and did not want his retirement contributions refunded. The appellant asserted that Mr. Connor told him the refund application would be canceled. The appellant also claimed that he called Mr. Connor on April 23, 1962 after signing the second refund application and again told Mr. Connor to disregard the application. According to the appellant, Mr. Connor assured him that both applications would be canceled.

The record reveals that the CSC authorized payment of the appellant's retirement contributions on June 1, 1962. (See Standard Form 2806, Agency File at tab 6). The appellant admitted receiving that payment in late June 1962. (See page 2 of Appellant's July 20, 1988 Statement Of Facts And Issues). Although the appellant now claims to have attempted to return that check, the record contains no contemporaneous documentary evidence indicating an attempt to return the refund

payment. There is no documentation, until years later, that the appellant contacted the CSC in April 1962 to cancel his refund application. The absence of such contemporaneous documentary evidence is noteworthy in light of the appellant's propensity (as demonstrated by the plethora of documents contained in this appeal file) for generating and maintaining documentation relating to his various complaints and grievances. Moreover, the fact that the appellant received his refund payment in june 1962 indicates that the CSC did not assure the appellant that his refund applications would be canceled.

The only documentation corroborating the appellant's assertion that he called the CSC in April 1962 are affidavits from Mr. Russell Ray dated April 22, 1985 and June 27, 1988. According to Mr. Ray's 1985 affidavit, the appellant objected to signing the papers authorizing "release of his retirement account." (Untabbed

attachment to appellant's petition for appeal). In his 1988 affidavit, Mr. Ray averred that he was the appellant's representative on April 23, 1962 when he went to the appellant's home and both men called the CSC's Regional Office, requesting that the CSC void the refund application because it was signed under threat. (Appellant's Exhibit P). According to Mr. Ray's affidavit, "Mr. Joseph Connor said threats were unlawful and that both CSC refund forms were rescinded." The Appellant also submitted an affidavit from E. E. Mayfield dated July 30,1988, stating that the appellant signed the refund applications under duress and that the "CSC Regional Office voided both refund forms." (Appellant's Hearing Exhibit 3).

The persuasiveness of the affidavits from Mr. Ray and Mr. Mayfield is lessened by the fact that they were prepared more than 20 years after the appellant signed his refund applications. In addition, in

Mr. Ray's November 3, 1971 affidavit outlining the harassment the appellant received at the time of his removal, Mr. Ray made no reference to any Air Force personnel coercing the appellant into signing refund applications. (Appellant's Exhibit BBB).

In addition to the foregoing, the alleged April 20, 1962 refund application indicating that it was "signed under protest" is nowhere to be found. There is also no reference to such a document until years later. Again, the absence of any such documentation is significant given the appellant's propensity for maintaining such records. The only copy of a refund application bearing the appellant's signature is the April 23rd application contained in OPM"s file. (Agency File at tab 6). Nothing on that application indicates that it was "signed under protest" or otherwise involuntarily executed. Therefore, in the absence of any

credible evidence that the appellant was coerced into applying for a refund of his retirement contributions in April 1962, I find that the appellant's refund application is valid. Consequently, because the appellant received a lump-sum payment of his retirement contributions, he is not entitled to a retirement annuity. See Yarbrough, 770 F.2d at 1061.

FOOTNOTES:

{1} In his submission to the Board, the appellant indicated his desire to address the propriety of his 1962 removal from the Air Force as well as several other issues, including (1) age and religious discrimination related to his removal, (2) First Amendment violations, and (3) the refusal of the Air Force and OPM to process his application for disability retirement. In the prehearing Order dated August 1, 1988, these issues were found immaterial to this appeal

(2) The appellant has not alleged that he was misinformed about his rights. In fact, the refund application clearly stated that he would forfeit his annuity rights by accepting a refund.

DECISION

OPM's reconsideration decision is AFFIRMED.

FOR THE BOARD:

HOWARD ANSORGE
Admin. Judge